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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**HIGHLAND CAPITAL MANAGEMENT, L.P.,**

**Reorganized Debtor.**

**Chapter 11**

**Case No. 19-34054-sgj11**

**MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE  
LITIGATION SUB-TRUST,**

**Plaintiff,**

**v.**

**JAMES D. DONDERO; MARK A. OKADA; SCOTT  
ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT  
III; FRANK WATERHOUSE; STRAND ADVISORS, INC.;  
NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P.; DUGABOY  
INVESTMENT TRUST AND NANCY DONDERO, AS  
TRUSTEE OF DUGABOY INVESTMENT TRUST; GET  
GOOD TRUST AND GRANT JAMES SCOTT III, AS  
TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN  
INVESTMENT TRUST; MARK & PAMELA OKADA  
FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE  
TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA  
FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA  
OKADA FAMILY TRUST – EXEMPT TRUST #2 AND  
LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE  
OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT  
TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF  
HOLDCO, LTD.; CHARITABLE DAF FUND, LP.;  
HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP,  
SERIES 1; MASSAND CAPITAL, LLC; MASSAND  
CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND  
CPCM, LLC,**

**Defendants.**

Adv. Pro. No. 21-03076-sgj

**DEFENDANTS’ UNOPPOSED MOTION FOR LEAVE TO FILE A REPLY BRIEF  
IN EXCESS OF PAGE LIMITS**

Defendants<sup>1</sup> hereby file this *Unopposed Motion for Leave to File a Reply Brief in Excess of Page Limits* (the “Motion”) requesting the Court to allow Defendants to file six Reply Briefs with a 13-page limit, with any unused pages to be usable by the other Defendants, with an aggregate total not to collectively exceed 78 pages. In support of this Motion, Defendants respectfully state as follows:

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<sup>1</sup> NexPoint Advisors, L.P., Highland Capital Management Fund Advisors, L.P., Isaac Leventon, Scott Ellington, CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., Mark Okada, Mark & Pamela Okada Family Trust Exempt Trust # 1 and Lawrence Tonomura in his capacity as Trustee, James D. Dondero, Dugaboy Investment Trust and Nancy Dondero in her capacity as Trustee, Get Good Trust and Grant Scott in his capacity as Trustee, Hunter Mountain Investment Trust, Rand PE Fund I, L.P., Series 1, and Strand Advisors, Inc.

**I. RELEVANT FACTUAL BACKGROUND**

1. On October 15, 2021, the Litigation Trustee commenced the above-captioned adversary proceeding against Defendants [Docket No. 1] (the “Complaint”).

2. On May 19, 2022, the Litigation Trustee filed an amended complaint [Docket No. 158] (the “Amended Complaint”).

3. On July 11, 2022, a Motion to Dismiss the Amended Complaint was filed by defendant Isaac Leventon [Docket Nos. 172 and 173] (“Leventon” and the “Leventon Motion”).

4. On July 11, 2022, a Motion to Dismiss the Amended Complaint was filed by defendant Scott Ellington [Docket Nos. 175 and 176] (“Ellington” and the “Ellington Motion”).

5. On July 11, 2022, a Motion to Dismiss the Amended Complaint and a Motion for a More Definite Statement was filed by defendants CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, and Highland Dallas Foundation, Inc. [Docket Nos. 178, 179, and 191] (the “CLO Holdco Defendants” and the “CLO Holdco Defendants Motions”).

6. On July 11, 2022, a Motion to Dismiss the Amended Complaint was filed by defendants Highland Capital Management Fund Advisors, L.P., and NexPoint Advisors, L.P. [Docket Nos. 182 and 183] (the “Advisor Defendants” and the “Advisor Defendants Motion”).

7. On July 11, 2022, a Motion to Dismiss the Amended Complaint was filed by defendants Mark Okada, Mark & Pamela Okada Family Trust Exempt Trust # 1 and Lawrence Tonomura in his capacity as Trustee, and Mark & Pamela Okada Family Trust Exempt Trust # 2 and Lawrence Tonomura in his capacity as Trustee [Docket Nos. 185 and 186] (the “Okada Defendants” and the “Okada Defendants Motion”).

8. On July 12, 2022, a Motion to Dismiss the Amended Complaint was filed by defendants James D. Dondero, Dugaboy Investment Trust and Nancy Dondero in her capacity as

Trustee, Get Good Trust and Grant Scott in his capacity as Trustee, Hunter Mountain Investment Trust, Rand PE Fund I, L.P., Series 1, and Strand Advisors, Inc. [Docket Nos. 189 and 190] (the “Dondero Defendants” and the “Dondero Defendants Motion,” and, collectively with the Leventon Motion, Ellington Motion, CLO Holdco Defendants Motions, Advisor Defendants Motion, and Okada Defendants Motion, the “Motions to Dismiss”).

9. The Litigation Trustee and Defendants negotiated a briefing schedule for the Motions to Dismiss, which was approved by the Court. See Stipulation and Proposed Second Amended Scheduling Order, entered by the Court on June 29, 2022 [Docket No. 167].

10. On September 19, 2022, the Litigation Trustee filed its Response in Opposition to Defendants’ Motions to Dismiss and the CLO Holdco Defendants’ Motion for a More Definitive Statement (the “Opposition Brief”) so the full procedure history is included in this brief.

11. On November 14, 2022, each Defendant will file a Reply to the Litigation Trustee’s Opposition Brief (the “Reply Briefs”).

## **II. BASIS FOR RELIEF**

1. Compelling reasons exist for this Motion. The Complaint asserts 36 causes of action against 21 defendants. Seventeen of those defendants have filed six separate Motions to Dismiss. The Litigation Trustee's Opposition Brief is 112 pages.

2. While the Defendants have attempted to keep their Reply Briefs as succinct as possible, they believe that their Reply Briefs will need to exceed 10 pages in order to adequately address the arguments raised in the Opposition Brief.

3. Counsel for Defendants and counsel for the Litigation Trustee have reached an agreement wherein Defendants can submit six Reply Briefs with each brief having a 13-page limit,

with any unused pages to be usable by the other Defendants, with an aggregate total not to collectively exceed 78 pages, to be divided between the six Reply Briefs as Defendants see fit.

4. Counsel for Defendants conferred with counsel for the Litigation Trustee who filed the Opposition Brief to Defendants' Motions and counsel for the Litigation Trustee consents to the relief requested herein.

5. For these reasons, Defendants respectfully requests the Court's leave to file six Reply Briefs with a 13-page limit, with any unused pages to be usable by the other Defendants, not to collectively exceed 78 pages in length.

### **REQUEST FOR RELIEF**

WHEREFORE, Defendants respectfully request that the Court grant the Motion in its entirety, allow Defendants to file six Reply Briefs with a 13-page limit, with any unused pages to be usable by the other Defendants, not to collectively exceed 78 pages in length as described herein, and grant Defendants such further and other relief to which they are entitled.

Dated: October 31, 2022

Respectfully submitted,

**STINSON LLP**

/s/ Deborah Deitsch-Perez

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***Counsel for the CLO Charitable Defendants***

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that on October 27, 2022, the undersigned counsel conferred on behalf of the Defendants with counsel for the Litigation Trustee regarding the substance of the foregoing Motion. The Litigation Trustee consents to the relief requested herein.

/s/Michael P. Aigen

Michael P. Aigen



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 31, 2022, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez*

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Deborah Deitsch-Perez